RULE 52. FINDINGS BY THE COURT

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the Superior Court justice or, if an electronic recording was made in the District Court, the District Court judge, shall, upon the request of a party made as a motion within 5 days after notice of the decision, or may upon its own motion, find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment if it differs from any judgment that may have been entered before such request was made; provided that, in every action for termination of parental rights, the court shall make findings of fact and state its conclusions of law thereon whether or not requested by a party. In granting or refusing interlocutory injunctions the court shall similarly on such request set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a referee, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 50(d).

(b) Amendment. The court may, upon motion of a party made not later than 10 days after notice of findings made by the court, amend its findings or make additional findings and, if judgment has been entered, may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment.

Advisory Committee's Note
February 1, 1983

This amendment to Rule 52(a) is designed to correlate this rule with the changes made in Rule 41(b) (2) and Rule 50(d).

Advisory Committee's Note
April 15, 1975

A problem may arise as to when the time for appeal under Rule 73(a) starts running when a request for findings of fact and conclusions of law is made after a judge, sitting without a jury, has ordered the entry of judgment and the judge complies with the request to make findings but does not direct the entry of any judgment. Under the existing rule it might be argued that the judge's failure to "direct the entry of the appropriate judgment" after making the requested findings left the case without a then appealable judgment. The amendment makes clear that no judgment is required after the making of findings unless the appropriate judgment would differ from the judgment originally directed. It at the same time follows that the original judgment remains appealable. Of course the provisions of Rule 73(a) extending the time for taking an appeal where there has been a timely motion under Rule 52(a) eliminate any necessity for filing a protective appeal prior to the judge's making the requested findings.

Reporter's Notes
December 1, 1959

This rule is like Federal Rule 52 with one important modification. Under Maine practice in equity separate findings of law and fact are required upon request of either party. R.S.1954, Chap. 107, Sec. 26 (repealed in 1959). A judge sitting without jury at law is under no such duty. *See Sacre v. Sacre,* 143 Me. 80, 101, 55 A.2d 592, 603 (1947). The merger of law and equity calls for the same treatment in this respect of matters of legal and equitable cognizance. The rule provides for findings of fact and conclusions of law upon request in all non-jury cases, but permits the request to be made within 5 days of notice of the decision. The Federal rule requires findings and conclusions in all non-jury cases. It is believed that this would be an unnecessary burden on trial judges with limited stenographic facilities. There are many cases where it is obvious that there will be no appeal so that a general finding is sufficient.

The rule provides that findings of fact shall not be set aside unless clearly erroneous. It is believed that this standard corresponds to the present Maine law, both at law and in equity, although the court has formulated the standard in various ways. Law: *Ray v. Lyford,* 153 Me. 408, 140 A.2d 749 (1958) (no error if supported by "any credible evidence"); *Ayer v. Androscoggin & Kennebec Ry.,* 131 Me. 381, 163 A. 270 (1932) (findings final "so long as they find support in the evidence"); *Chabot & Richard Co. v. Chabot*, 109 Me. 403, 84 A. 892 (1912) (findings final "if there is any evidence to support them"). Equity: *Strater v. Strater,* 147 Me. 33, 83 A.2d 130 (1951) (findings conclusive "unless clearly

wrong"). Superior Court justice sitting as Supreme Court of Probate: *Cotting v. Tilton*, 118 Me. 91, 106 A. 113 (1919) (findings conclusive "if there is any evidence to support them"). There is no intention to change the law in this respect.

Rule 52(b) permits a motion for amendment of findings only if made within 10 days after notice of the findings. This departure from Federal Rule 52(b), which measures the time from entry of judgment, is necessary since under Rule 52(a) findings need be made only upon request.